

ORDINANCE NO. 4246

BILL NO. 60 (2015)

A BILL FOR AN ORDINANCE AMENDING TITLE 19,  
MAUI COUNTY CODE, TO ALLOW COMMERCIAL AGRICULTURAL  
STRUCTURES IN THE AGRICULTURAL DISTRICT

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose and intent. The purpose of this bill is to enhance economic viability of the agriculture industry in the County by allowing farmers to have commercial structures to sell their agricultural products, including value-added agricultural products, within the County agricultural district as accessory or special uses, subject to appropriate restrictions and standards.

SECTION 2. Section 19.04.040, Maui County Code, is amended by deleting the definition of “Agricultural products stand” as follows:

["“Agricultural products stand” means a structure used for the display and sale of agricultural products.”]

SECTION 3. Chapter 19.30A, Maui County Code, is amended to add a new section to be appropriately designated and to read as follows:

**“19.30A.015 Definitions.** When used in this chapter, unless the context clearly indicates a different meaning, the following words and terms shall be defined as follows:

“Active agriculture operation” means a commercial or subsistence agricultural, silvicultural, or aquacultural facility or pursuit, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of

any plant or animal species in a controlled salt, brackish, or freshwater environment.

“Agricultural food establishment” means a building or structure, owned and operated by a producer and permitted under title 11, chapter 50 of the administrative rules of the state department of health, that prepares and serves food at retail using agricultural products grown, raised, or caught in the County, and value-added products that were produced using agricultural products grown in Hawaii.

“Agricultural products stand” means a building, structure, or place that is partially enclosed by walls, at least twenty-five percent open to the outside when in operation, owned and operated by a single agricultural product producer for the display and sale of agricultural products grown, raised, or caught in the County, and value-added products produced using agricultural products grown, raised, or caught in Hawaii.

“Agricultural retail structure” means a fully-enclosed building or structure owned and operated by a single producer for the display and sale of agricultural products grown, raised, or caught in the County, value-added products that were produced using agricultural products grown, raised, or caught in Hawaii, logo items related to the producer’s agricultural operations, and other food items.

“Commercial agricultural structure” means an agricultural products stand, farmer’s market, agricultural retail structure, or agricultural food establishment.

“Farmer’s market” means either:

The temporary use of land that is managed by a single producer who leases space or stalls for the outdoor sale of agricultural products grown, raised, or caught in the County or value-added products that were produced using agricultural products grown, raised, or caught in Hawaii; or

A building or structure managed by a single producer who leases space or stalls for the display and direct retail sale of agricultural products grown, raised, or caught in the County or value-added products that were produced using agricultural products grown in Hawaii.

“Logo item” means an item for direct retail sale by a producer that has the producer’s business logo permanently affixed to it. Logo items include, but are not limited to, clothing, cups, glasses, stationery, and writing instruments.

“Other food item” means a food item that is neither an agricultural product grown, raised, or caught in the County nor a value-added product that was produced using agricultural products grown, raised, or caught in Hawaii.

“Producer” means an owner, lessee, or licensee of land located within the agricultural district, who is engaged in the growing or production for sale of any agricultural product or value-added products on such land.

“Total floor area” includes areas used for outdoor seating, dining, or retail activities. It does not include areas used for parking or agricultural product production.

“Value-added” refers to a raw agricultural product whose market value has been increased by special manufacturing, marketing, or processing.”

SECTION 4. Section 19.30A.050, Maui County Code, is amended to read as follows:

**“19.30A.050 Permitted uses.** The following uses and structures shall be permitted in the agricultural district provided they also comply with all other applicable laws:

A. Principal [Uses.] uses.

1. Agriculture[;].
2. Agricultural land conservation[;].
3. Agricultural parks, pursuant to chapter 171, [Hawai'i] Hawaii Revised Statutes[;].
4. Animal and livestock raising, including animal feed lots and sales yards[;].
5. Private agricultural parks as defined herein[;].
6. Minor utility facilities as defined in section 19.04.040[, Maui County Code;]of this title.
7. Retention, restoration, rehabilitation, or improvement of buildings, sites, or cultural landscapes of historical or archaeological significance[; and].
8. Solar energy facilities, as defined in section 19.04.040[, Maui County Code,]of this title, and subject to the restrictions of chapter 205, Hawaii Revised Statutes, that are less than fifteen acres, occupy no more than thirty-five percent of the lot, and are compatible with existing agricultural uses; except that land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E need not be compatible with existing agricultural uses.

B. Accessory [Uses.] uses. Uses that are incidental or subordinate to, or customarily used in conjunction with, a permitted principal use as follows:

1. Two farm dwellings per lot, one of which shall not exceed one thousand square feet of developable area[;].

2. One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot shall meet two of the following three criteria:

a. Provide proof of at least \$35,000 of gross sales of agricultural product(s) per year, for the preceding two consecutive years, for each farm labor dwelling on the lot, as shown by State general excise tax forms and federal form 1040 Schedule F filings[;].

b. Provide certification by the department of water supply that agricultural water rates are being paid if the subject lot is served by the County water system[; or].

c. Provide a farm plan that demonstrates the feasibility of commercial agricultural production.

On the islands of [Moloka'i] Molokai and [Lana'i] Lanai, the owner or lessee of the lot shall meet both of the criteria provided by subsections [19.30A.050.B.2.a and 19.30A.050.B.2.b;] 19.30A.050(B)(2)(a) and 19.30A.050(B)(2)(b).

3. [One agricultural products stand per lot, for the purpose of displaying and selling agricultural products grown and processed on the premises or grown in the County, provided that said stand shall not exceed three hundred square feet, shall be set back at least fifteen feet from roadways, shall have a wall area that is at least fifty percent open, and shall meet the off-street parking requirements for roadside stands provided by section 19.36.010 of this code, except that paved parking shall not be required; stands that display or sell agricultural products that are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, Hawai'i Revised Statutes;] A maximum of two commercial agricultural structures per lot, subject to parking requirements of section 19.36A.010.

4. [Farmer's market for the growers and producers of agricultural products to display and sell agricultural products grown and processed in the County; structures shall have a wall area that is at least fifty percent open; markets shall operate only during daylight hours and shall not operate on parcels less than ten acres; the director of public works may impose additional requirements if a building permit is required for any structures; markets that display or sell agricultural products that are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, Hawai'i Revised Statutes;

5.] Storage, wholesale and distribution, including barns; greenhouses; storage facilities for agricultural

supplies, products and irrigation water; farmer's cooperatives; and similar structures that are customarily associated with one or more of the permitted principal uses or, for the purpose of this section, are associated with agriculture in the County[;].

[6.]5. Processing of agricultural products, the majority of which are grown in the County; this includes the burning of bagasse as part of an agricultural operation[;].

[7.]6. Energy systems, small-scale[;].

[8.]7. Small-scale animal-keeping[;].

[9.]8. Animal hospitals and animal board facilities; if conducted on the island of [Moloka'i]Molokai, such uses shall have been approved by the [Moloka'i]Molokai planning commission as conforming to the intent of this chapter[;].

[10.]9. Riding academies; if conducted on the island of [Moloka'i] Molokai, such uses shall have been approved by the [Moloka'i]Molokai planning commission as conforming to the intent of this chapter[;].

[11.]10. Open land recreation as follows: hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical gardens; guided tours that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours; hang gliding; paragliding; mountain biking; and accessory restroom facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding, or mountain biking are conducted for commercial purposes on the island of [Moloka'i]Molokai, such uses shall have been approved by the [Moloka'i]Molokai planning commission as conforming to the intent of this chapter. Open land recreation uses or structures not specifically permitted by this subsection or by subsection [19.30A.060.H] 19.30A.060(H) shall be prohibited; certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, [Hawai'i]Hawaii Revised Statutes[;].

[12.]11. Except on [Moloka'i]Molokai, bed and breakfast homes permitted under chapter 19.64 of this [code] title that are:

a. Operated in conjunction with a bona fide agricultural operation that produced \$35,000 of gross sales of agricultural products for each of the preceding two years, as shown by State general excise tax forms and federal form 1040 [schedule] Schedule F filings; or

b. In compliance with all of the following criteria, provided that the bed and breakfast home is not subject

to a condominium property regime pursuant to chapter 514A, Hawaii Revised Statutes:

- i. The lot was created prior to November 1, 2008.
- ii. The lot is comprised of five acres or less[; and].
- iii. An approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes; or
- c. Located in sites listed on the State of Hawaii Historic Register or the National Register of Historic Places.

[13.]12. Parks for public use, not including golf courses, and not including commercial uses except when under the supervision of a government agency in charge of parks and playgrounds[; and].

[14.]13. Other uses that primarily support a permitted principal use; however, such uses shall be approved by the appropriate planning commission as conforming to the intent of this chapter.”

SECTION 5. Section 19.30A.060, Maui County Code, is amended to read as follows:

**“19.30A.060 Special [Uses.]uses.** The following uses and structures shall be permitted in the agricultural district if a special use permit, pursuant to section 19.510.070 of this title has been obtained; except that if a use described in this section also requires a special permit pursuant to chapter 205, Hawaii Revised Statutes, and if the land area of the subject parcel is fifteen acres or less, the state special permit shall fulfill the requirements of this section:

[A.]1. Additional farm dwellings beyond those permitted by subsection [19.30A.050.B.1.] 19.30A.050(B)(1).

[B.]2. Farm labor dwellings that do not meet the criteria of subsection [19.30A.050.B.2.] 19.30A.050(B)(2).

[C.]3. [Agricultural products stands]Commercial agricultural structures that do not meet the standards and restrictions of [subsection 19.30A.050.B.3;]this chapter.

[D.]4. [Farmer’s markets that do not meet the standards of subsection 19.30A.050.B.4;

E.][Public and quasi-public institutions that are necessary for agricultural practices[;].

[F.]5. Major utility facilities as defined in section 19.04.040 of this title[;].

[G.]6. Telecommunications and broadcasting antenna[;].

[H.]7. Open land recreation uses, structures or facilities which do not meet the criteria of subsection [19.30A.050.B.11,] 19.30A.050(B)(11), including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping, skateboarding, rollerblading, playing fields, accessory buildings and structures. Certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawaii Revised Statutes. The following uses or structures shall be prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses, and golf driving ranges[;].

[I.]8. Cemeteries, crematories, and mausoleums[;].

[J.]9. Churches and religious institutions[;].

[K.]10. Mining and resource extraction[;].

[L.]11. Landfills[;].

[M.]12. Solar energy facilities that are greater than fifteen acres[; and].

[N.]13. Short-term rental homes, subject to the provisions of chapter 19.65 of this title; provided that, the applicant need not obtain a County special use permit pursuant to section 19.510.070 of this title; and provided further that, if the property containing the short-term rental home is located in the State agricultural district, the applicant shall obtain a State special use permit, pursuant to section 205-6, Hawaii Revised Statutes, in addition to the short-term rental home permit required by chapter 19.65 of this title.”

SECTION 6. Chapter 19.30A, Maui County Code, is amended to add a new section to be appropriately designated and to read as follows:

**“19.30A.072 Commercial agricultural structures. A. Requirements. All commercial agricultural structures are subject to the following requirements and restrictions:**

1. A commercial agricultural structure may sell agricultural products or value-added products that are not grown, raised, caught or produced on the lot on which the commercial agricultural structure is located, so long as an active agriculture operation is present on the lot where the commercial agriculture structure is located.

2. A farm plan showing an active agriculture operation shall be provided to the department of planning and its implementation shall be verified before a commercial agricultural structure commences operation. Agricultural products stands that are less than three hundred square feet in total floor area are exempt from this requirement.

B. Agricultural products stands. An agricultural products stand that is more than one thousand square feet in total floor area shall require a special use permit.

C. Farmer's markets. All farmer's markets are subject to the following requirements:

1. A farmer's market that is more than three thousand square feet in total floor area shall require a special use permit.

2. All farmer's markets shall operate only during daylight hours.

D. Agricultural retail structures. Agricultural retail structures are subject to the following requirements:

1. An agricultural retail structure that is more than one thousand square feet in total floor area shall require a special use permit.

2. All agricultural retail structures that serve food shall require a permit as required under title 11, chapter 50 of the rules of the state department of health.

3. Within an agricultural retail structure, other food items and logo items shall occupy no more than forty percent of the total floor area.

E. Agricultural food establishments. All agricultural food establishments are subject to the following requirements:

1. An agricultural food establishment that is more than one thousand square feet in total floor area shall require a special use permit.

2. All food must be prepared in accordance with the State Department of Health rules and regulations.

F. Registration. Producers who propose to own or operate a commercial agricultural structure shall register the structure with the department of planning. The registration form shall include the following information:

1. The name, address, and contact information for the producer.

2. The tax map key number of the lot on which the proposed commercial agricultural structure is located.

3. Verification that the producer is the owner, lessee, or licensee of the lot on which the proposed commercial agricultural structure is located. If the producer is the lessee or licensee, authorization of the owner shall also be provided. A lessee or licensee must have a verifiable lease with a minimum duration of one year for the portion of the lot upon which the structure is located, or will be located.

4. The type of commercial agricultural structure(s) being registered.



5. The signature of the producer, certifying acknowledgment of and compliance with the requirements of this chapter and all other applicable laws and regulations, including those of the state department of health and the department of public works.

6. Any additional information requested by the planning director.

G. Database. The department of planning shall maintain a database of all commercial agricultural structures registered pursuant to this chapter.

H. Separate registration. Each commercial agricultural structure shall require a separate registration.

I. Exemption. Agricultural product stands that are three hundred square feet or less in total floor area are exempt from the registration requirements of this section.

J. Rules. Additional regulation of commercial agricultural structures may be established by administrative rules.”

SECTION 7. Section 19.36A.010, Maui County Code, is amended to

read as follows:

**“19.36A.010 Designated number of spaces.** Unless otherwise provided in this chapter, the following minimum numbers of accessible off-street facilities for the parking of self-propelled motor vehicles shall be provided on private property in connection with the use of any land, or the erection or remodeling of any building or structure. The number of off-street parking spaces required shall not be less than the sum total of spaces of the number of required parking spaces for each component use of land, building, or structure hereinafter specified:

USE	MINIMUM PARKING RATIO
Accessory dwelling	One parking space for each dwelling unit.
Apartment house, apartment, apartment-motel with kitchen facility in room	Two parking spaces for each unit; provided that, two parking spaces assigned to a dwelling unit, or allocated for employee parking, may be situated in tandem thereby allowing two vehicles to park end to end.
Auditorium, theater, stadium, bleachers	One parking space for every six seats.

Banks and medical and dental clinics	One parking space for every three hundred square feet of building; provided that, the minimum shall be three parking spaces.
Bed and breakfast home	One parking space for each bedroom used for bed and breakfast home use, in addition to any other parking space(s) required by this section for dwellings not used for short-term rental. Stalls may be situated in tandem.
Bowling alley	Five parking spaces for each alley.
Business building	One parking space for every five hundred square feet of floor area of building; provided that, the minimum shall be three parking spaces.
Church, place of worship	One parking space for every one hundred square feet of floor area of building.
Clubhouse, private club	One parking space for every two hundred square feet of floor area of building.
<u>Commercial agricultural structures as defined in section 19.30A.072 of this title</u>	<u>One parking space for every two hundred square feet of floor area of building or, for farmer's markets, one parking space for every two hundred square feet of retail floor space; provided that, the minimum shall be two parking spaces; further provided that, for agricultural food establishments, the parking requirements for restaurant, bar, nightclub, and amusement facilities shall apply.</u>
Convertible apartment, hotel and apartment/hotel units, i.e., single units capable of being utilized as two or more units	An additional one parking space for every three convertible units shall be provided.
Day care facility	One parking space for each classroom.

Domestic type business in home	One parking space for each business.
Golf course	Three parking spaces for each hole in the course.
Golf driving range	Four parking spaces for each acre.
Hospitals	One parking space for every three beds.
Hotel	One parking space for every two guest rooms.
Industrial or storage uses in M-1 and M-2 industrial zones	One parking space for every six hundred square feet of floor area of building or twenty-five percent of the lot area, whichever is the greater.
Library, museum, art gallery	One parking space for every three hundred square feet of floor area of building.
Live/work mixed use	One parking space for every seven hundred fifty square feet of area used for live/work business; commercial uses and residential uses with a live/work configuration may share parking spaces. The spaces required for the residential unit on a live/work building lot may be applied toward the number of spaces required for a business use.
Lodging house	One parking space for every two lodging rooms.
Mortuary	One parking space for every forty square feet of floor area of building.
Motel	One and one-half parking spaces for each unit.
Public utility substation	One parking space.
Restaurant, bar, nightclub, amusement centers	One parking space for every one hundred square feet of serving and dining areas; provided that, there shall be a minimum of three parking spaces for patrons and a minimum of three additional spaces for employee parking for each such establishment.

[Roadside stand]	[Two parking spaces for each stand.]
Sanitarium, welfare institution, nursing home	One parking space for every eight beds
SBR mixed-use establishment	Two parking spaces per dwelling unit plus one space for every three hundred square feet of non-residential gross floor area.
SBR service establishment	One parking space for every three hundred square feet of gross floor area.
School with students under fifteen years of age and with students fifteen years of age or older	Eight parking spaces for each classroom.
School with students under fifteen years of age	One parking space for each classroom.
School with students under fifteen years of age or older	Eight parking spaces for each classroom.
Self-storage	One parking space for every three thousand square feet of storage.
Service station, repair shop, garage	One parking space for every two hundred square feet of floor area of building or forty percent of the lot area, whichever is the greater. The storing and keeping of damaged vehicles or parts thereof shall be within an enclosure bounded completely by a wall six feet in height
Shopping centers	One parking space for every two hundred square feet of floor area of all buildings, except for restaurant, bar, nightclub, and amusement facilities, for which parking requirements under this section shall apply.
Short-term rental home	One parking space if there are more than four bedrooms used for short-term rental home use, in addition to any other parking

	requirements under this chapter. Parking stalls may be situated in tandem and on grasscrete.
Single-family dwelling, farm dwelling, duplex	Two parking spaces for each dwelling unit.
Swimming pool, gymnasium	One parking space for every six hundred square feet of gross floor area of pool or building.
Taxi stand and bus stand	One parking space for each vehicle operating from that stand. The space shall be sufficient in size to accommodate the bus or vehicle, and shall be marked "Taxi Only" or "Bus Only".
Tennis courts	Six parking spaces for each court.
Transient vacation rental in the SBR service business residential district	One parking space for every five hundred square feet of floor area, with a minimum of one parking space for each unit.
U-drive stand and storage	One parking space for each vehicle operating from that stand or storage. Where the U-drive business is within a hotel district, the storage area for the U-drive vehicles shall be physically separated from the hotel parking area, and shall be physically bounded and marked for "U-Drive Vehicles Only." "

SECTION 8. Section 19.36A.080, Maui County Code, is amended to read as follows:

**"19.36A.080 Paving.** Every off-street parking space or area other than for single-family dwellings, bed and breakfast homes, farm dwellings, guest house, [and] servants' quarters, and commercial agriculture structures as defined in section 19.30A.015 of this title shall be paved with asphaltic or concrete surface or equivalent. The planning director may allow or require other surface material consistent with [an] approved regional or community design guidelines. The County encourages the use of colored and textured concrete or asphalt paving material in parking lots to improve aesthetics."

SECTION 9. Section 19.36A.160, Maui County Code, is amended to read as follows:

**“19.36A.160 Parking reduction or waiver.** A. The planning director or, in the case of the island of Lanai, the Lanai planning commission, may waive or defer up to thirty percent of the required parking for the following developments:

1. Warehouses or storage facilities;
2. Live/work mixed use or residential mixed use projects; and
3. Churches or other places of worship.

B. The planning director or, in the case of the island of Lanai, the Lanai planning commission, may waive or defer up to fifty percent of the required parking for commercial agricultural structures as defined in section 19.30A.015 of this title.

~~[B.]~~ C. In determining whether to waive or defer required parking, the planning director, or, in the case of Lanai, the Lanai planning commission, shall consider the following:

1. Off-site parking agreements, provided that the off-site parking facility is not more than four hundred feet from the nearest principal entrance of the building occupied by the use[;].

2. Joint-use parking agreements between two or more uses that demonstrate that the peak parking times of the uses occur at different times of the day, and that the joint-use parking facility will be sufficient to accommodate the anticipated demand of the two or more uses[;].

3. Whether a publicly owned off-street parking lot containing one hundred fifty or more parking spaces is in the proximity of the development and is available[;].

4. Off-site employee parking, employee car or van pooling, and provision of employee transit passes[;].

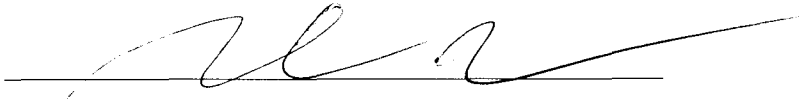
5. Superior pedestrian, bicycle, or transit access[; and].

6. Proof of parking reserves in the form of reserved open space area in excess of the minimum open space or landscape requirements and agreements to construct additional parking when and if warranted as determined by the planning director or commission based on evidence of overflow parking on public streets, in fire lanes, or in other areas that are not striped for parking.”

SECTION 10. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 11. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Department of the Corporation Counsel  
County of Maui

ear:misc:007abill02:scb

WE HEREBY CERTIFY that the foregoing BILL NO. 60 (2015)

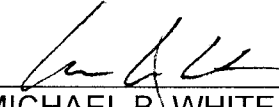
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 4th day of September, 2015, by the following vote:

Michael B. WHITE Chair	Donald S. GUZMAN Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	S. Stacy CRIVELLO	G. Riki HOKAMA	Michael P. VICTORINO
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 4th day of September, 2015.

DATED AT WAILUKU, MAUI, HAWAII, this 4th day of September, 2015.

RECEIVED  
2015 SEP -4 PM 1:58  
OFFICE OF THE MAYOR

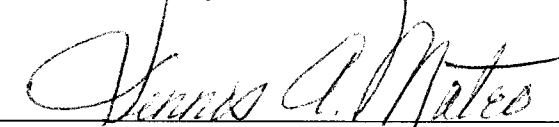
  
MICHAEL B. WHITE, CHAIR  
Council of the County of Maui

  
DENNIS A. MATEO, COUNTY CLERK  
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 4 DAY OF September, 2015.

  
ALAN M. ARAKAWA, MAYOR  
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 4246 of the County of Maui, State of Hawaii.

  
DENNIS A. MATEO, COUNTY CLERK  
County of Maui

Passed First Reading on August 25, 2015.  
Effective date of Ordinance September 4, 2015

RECEIVED  
2015 SEP -8 AM 9:49  
OFFICE OF THE  
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 4246, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

\_\_\_\_\_  
County Clerk, County of Maui